

LAW OFFICES

COHN AND MARKS

DOCKET FILE COPY ORIGINAL

SUITE 600

1333 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-1573

TELEPHONE (202) 293-3860

FACSIMILE (202) 293-4827

HOME PAGE WWW.COHNMARKS.COM

JOEL H. LEVY  
ROBERT B. JACOBI  
ROY R. RUSSO  
RONALD A. SIEGEL  
LAWRENCE N. COHN  
RICHARD A. HELMICK  
WAYNE COY, JR.  
MARK L. PELESH  
J. BRIAN DE BOICE  
EDWARD N. LEAVY

SUSAN V. SACHS  
JOHN R. PRZYPYSZNY  
A. SHEBA CHACKO  
KEVIN M. GOLDBERG  
MICHAEL A. McVICKER  
SHARON H. BOB, PH.D.  
HIGHER EDUCATION  
SPECIALIST ON  
POLICY AND REGULATION

OF COUNSEL  
MARCUS COHN  
LEONARD H. MARKS  
STANLEY S. NEUSTADT  
RICHARD M. SCHMIDT, JR.

DIRECT DIAL: (202) 452-4817

INTERNET ADDRESS: lnc@cohnmarks.com

May 20, 1997

VIA HAND DELIVERY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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MAY 20 1997

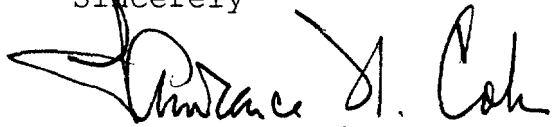
Federal Communications Commission  
Office of Secretary

Dear Mr. Caton

On behalf of Heftel Broadcasting corporation, there are herewith submitted and original and four (4) copies of its Reply Comments in MM Docket No. 97-91; RM 8854.

Please direct any inquiries regarding this matter to the undersigned counsel.

Sincerely

  
Lawrence N. Cohn

Enclosures (5)

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MAY 20 1997

Federal Communications Commission  
Office of Secretary

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BEFORE THE

## Federal Communications Commission

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 97-91  
Table of Allotments, ) RM-8854  
FM Broadcast Stations. )  
 )  
Lewisville, Gainesville, Robinson, )  
Corsicana, Jacksboro, and )  
Mineral Wells, Texas )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

### REPLY COMMENTS

Heftel Broadcasting Corporation ("Heftel"), parent of the licensee of Station KICI-FM, Corsicana, Texas, and of the permittee of Station KECS(FM), Gainesville, Texas, by its counsel, hereby submits these Reply Comments in response to the comments and counterproposals submitted in the above-referenced proceeding by Jerry Snyder and Associates, Inc. ("Snyder"), Metro Broadcasters-Texas, Inc. ("Metro-Broadcasters"), Hunt Broadcasting, Inc. ("Hunt"), and Graham Newspapers, Inc. ("Graham"). See Notice of Proposed Rule Making and Order to Show Cause DA97-489 (released March 14, 1997) ("NPRM"). Heftel submits that the proposal advanced in its Petition for Rule Making ("Petition"), which led the Commission to issue the NPRM, would result in an improved

arrangement of FM allotments which is superior to the conflicting counterproposals of both Snyder and Metro; accordingly, Heftel submits that its proposal should be adopted by the Commission as proposed in the NPRM. In support, Heftel states the following.

**Response to Comments of Snyder**

Snyder is the licensee of Station KYXS-FM, Mineral Wells, which operates on Channel 240C3. In 1992 the FCC's Allocations Branch issued a Report and Order which granted a petition for rule making filed by Snyder and changed KYXS-FM's Mineral Wells allotment to Channel 240C1, with a designated reference point identified by the coordinates NL 32-41-06; WL 98-09-32.<sup>1/</sup> Id., footnote 3. Snyder has pending before the Commission an application filed November 25, 1996, to upgrade Station KYXS-FM to operate on Channel 240C1 (BPH-961125IG).

Snyder makes no effort in its Comments to demonstrate that the utilization of Channel 240C1 by Station KYXS-FM at Mineral Wells would achieve a more beneficial arrangement of FM allotments than Heftel's proposals as set forth in the NPRM. For the reasons explained at pages 10-15 of Heftel's Comments, that would be impossible to do. Instead, Snyder attacks Heftel's Petition,

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<sup>1/</sup> In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Mineral Wells and Winters, Texas, 7 FCC Rcd 1791 (Assistant Chief, Allocation Branch, 1992).

contending that it contains a "fatal procedural error" (Snyder Comments, p. 3) which requires the Commission to dismiss Heftel's Petition without consideration on the merits. Id., p. 6.

The alleged "fatal error" in Heftel's Petition is articulated by Snyder on page 3 of its Comments as follows: "Heftel does not propose a change of the C1 reference point specified in Mineral Wells (North Latitude 32° 41' 06" and West Longitude 98° 09' 32")." Snyder repeats this point on the following page ("it [Heftel] does not propose to change the reference point for the Mineral Wells allotment already contained in 47 C.F.R. § 73.202") (Id., p. 4.), and states it again on the following page ("The Channel 240 C1 reference point for Mineral Wells has not changed, nor did the Heftel Petition propose that it be changed.") Id., p 5.

Snyder's "argument" may charitably be characterized as hypertechnical nit-picking, significant of absolutely nothing. More to the point, Snyder is simply wrong. In its Petition, Heftel wrote the following (pages 8-9):

"However, in order to allot Channel 237A at Jacksboro, Texas, it will be necessary to return the vacant Channel 240C1 allocation at Mineral Wells, Texas, to Channel 240C3. These are the current operating facilities of the licensee of Station KYXS-FM, Mineral Wells and were the allocated facilities until that licensee sought the upgrade to Class C1."

While this passage does not include the magic words "and change the Mineral Wells reference point to the one currently utilized by Station KYXS-FM," no sensible reader could possibly fail to understand that this was obviously and exactly what Heftel intended. The above-quoted passage, which refers to a "return" of the Mineral Wells allotment to the "current operating facilities of the licensee of station KYXS-FM" means precisely that Heftel proposed not only to reestablish the former Channel 240C3 allotment at Mineral Wells, but also to modify the reference point to the one currently utilized by Station KYXS-FM. Moreover, the contrary "interpretation" of Heftel's Petition now urged by Snyder (i.e., that Heftel proposed only a change in the channel allotment at Mineral Wells but not a change in the reference point), makes no sense. Because Station KYXS-FM is an operating facility, a Channel 240C3 allotment at Mineral Wells cannot be assigned a reference point anywhere other than the site at which KYXS-FM currently operates without Snyder's consent (which Snyder has not given), and so it is obvious that Heftel's intention was that both the Mineral Wells allotment and the reference point be returned to the "current operating facilities of . . . Station KYXS-FM."

Furthermore, this is exactly the basis upon which Exhibit 7 to the Sorensen Technical Statement, appended to the Petition, was

prepared.<sup>2/</sup> It shows that the proposed allotment of Channel 237A at Robinson would be properly spaced by 3.9 kilometers to the reference point of Station KYXS-FM's currently licensed site. See the Attachment, showing a 3.9 kilometer clearance between the Robinson reference point and the Channel 240C3 "LIC" site for Station KYXS-FM. Given this fact, it is obvious that Heftel was not only aware that the proposal for Robinson was in accordance with the FCC's spacing rules vis-a-vis Station KYXS-FM's current operation, Heftel proposed a change in the reference point for Mineral Wells to that utilized by Station KYXS-FM. In view of the foregoing, Snyder's complaint that Heftel's Petition should be dismissed because it failed to request a change in the Mineral Wells reference point "in terms" is, frankly, absurd.<sup>3/</sup>

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<sup>2/</sup> Snyder's reference to Exhibit 1 (rather than Exhibit 7) of Sorensen's Engineering Report (Comments, p. 3) is in error.

<sup>3/</sup> Snyder writes at length about the loss of the transmitter site which it proposed in its initial Channel 240C1 upgrade application, and its subsequent filing, on November 25, 1996, of a second application to utilize the Channel 240C1 allotment at Mineral Wells. See Snyder Comments, pp. 2-4 and Declaration of Jerry Snyder, appended thereto. Snyder apparently believes that the issue of its good faith in proceeding with the construction of Station KYXS-FM as a Class C1 facility after it received a permit from the Commission in 1992 is relevant to the resolution of instant rule making proceeding; however, it does not explain the connection between these matters. Heftel fails to see the relevance of Snyder's application efforts to this rulemaking proceeding, and it particularly fails to see the relevance of those efforts to Snyder's basic contention that Heftel's July 1996 Petition contained a "fatal procedural error" which warrants dismissal of the Petition by the Commission.

In any event, since Snyder's position is based on what it acknowledges is a "procedural error," and not on a matter of substance, Heftel will moot the argument by clarifying the meaning of the above quoted sentences from pages 8-9 of its Petition to make its position perfectly clear (if the Commission or any other party did not think its position was less than perfectly clear). Heftel's position is as follows:

In order to allot Channel 237A at Jacksboro, Texas, it will be necessary to return the vacant Channel 240C1 allocation at Mineral Wells, Texas, to Channel 240C3, (including a change in the Mineral Wells reference point to those currently licensed by the Commission for Station KYXS-FM). These are the current operating facilities of the licensee of Station KYXS-FM, Mineral Wells and were the allocated facilities until that licensee sought the upgrade to Class C1.

If such a clarification of its Petition is needed, and Heftel emphatically believes it is not, it requests the Commission to consider this clarification on a nunc pro tunc basis.

**Response to Comments and Counterproposal of Metro-Broadcasters**

Metro-Broadcasters, licensee of Station KHYI(FM), Howe, Texas, presents a counterproposal which would retain Channel 299A at Jacksboro, and would make FM channel changes at Detroit, Texas (where Channel 238C2 or 238C3 or 238A would be added), Howe, Texas (where Station KHYI would change from Channel 237C3 to Channel

237C2), and Hugo, Oklahoma (where Channel 238C2 would change to 294C2). Metro-Broadcasters Comments, p. 1.

Metro-Broadcasters asserts that Heftel's Petition is defective "because Heftel has failed to protect the existing Channel 240C1 allotment at Mineral Wells, Texas." Id., p. 2. Unless this contention is the same as the one advanced by Snyder (and which has been discussed in the preceding Section of these Reply Comments), the significance of this argument frankly escapes Heftel. The purpose of filing a petition for rulemaking such as the one Heftel filed, and which led to the issuance of the NPRM, is to change the FM Table of Allotments (Section 73.202(b) of the Commission's Rules). In such circumstances, it is often the case that the petitioner does not "protect" an existing allotment. In such cases, the Commission makes a determination based on the public interest whether the proposal, even though it would not "protect" certain current allotments, would result in a more favorable arrangement of FM allotments. The proposed downgrade of the Mineral Wells allotment from Channel 240C1 to Channel 240C3 was a specific component of Heftel's proposal. Accordingly, Heftel's Petition was clearly not "defective" simply because its proposal did not "protect" the current Channel 240C1 allotment at Mineral Wells as specified in the FM Table of Allotments.



Metro-Broadcasters describes in its Comments (pp. 4-6) certain public interest benefits which would allegedly result if its proposal were adopted. Suffice it to say that the gains identified by Metro-Broadcasters are a full order of magnitude less than those which would result from the adoption of the proposal advanced by Heftel and described in its Comments.<sup>4/</sup> Accordingly, Heftel will not respond with a detailed analysis comparing its proposal to the one advanced by Metro-Broadcasters.

#### **Response to Comments of Hunt**

Hunt, the licensee of Station KJKB(FM), Jacksboro, Texas, states that it does not oppose Heftel's proposal so long as Heftel is willing to reimburse it for "the reasonable costs of changing its channel." Hunt Comments, p. 2. Heftel made such a commitment in Section V of its Comments and confirms that commitment herein.

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<sup>4/</sup> To summarize, Metro-Broadcasting's proposal would provide: (1) a first local service to Detroit (1990 population of 706); (2) additional coverage by the Detroit station of 87,304 persons; and (3) additional coverage by KHYI of 137,974 persons. See Metro-Broadcasters Comments, pp. 4-5. On the other hand, Heftel's proposal would provide: (1) a first local service to Lewisville (1990 population of 46,521); (2) a first local service to Robinson (1990 population of 7,111); and (3) additional (net) coverage from the Gainesville and Corsicana stations of 2.7 million persons (and more than 2.3 million persons if the hypothetical "gain" of service from Station KYXS-FM obtaining Class C1 status is taken into account). See Heftel's Comments, pp. 10-15.

### **Response to Comments and Counterproposal of Graham**

Graham, the licensee of Station KWKQ(FM), Graham, Texas, requests that the rulemaking proceeding be expanded to include a channel upgrade for its station to Channel 296C2. This change is dependent upon a change in the allotment at Jacksboro to 237A, as proposed in the NPRM. Heftel supports this proposal, to the extent that it is both consistent with all aspects of Heftel's proposal, because it would supplement the increase in coverage area which would result from effectuation of the allotment plan advanced by Heftel in its Petition.

### **Withdrawal of Heftel's Alternative Proposal**


Heftel hereby withdraws from consideration Section IV of its Comments ("Heftel's Alternative Proposal"), and the portion of the Technical Statement of Robert du Treil, Sr. attached thereto which pertains to that matter (i.e., page 3, commencing with the second paragraph, through p. 5).

### Conclusion

For the reasons stated in Heftel's Comments<sup>5/</sup> and as set forth herein, Heftel submits that the Commission should modify the FM Table of Allotments as proposed by Heftel in its Petition and as set forth in Paragraph 10 of the NPRM (including a change in the Mineral Wells reference point to the current site of Station KYXS-FM),<sup>6/</sup> and should also modify Hunt's license for Station KJKB, Hunt, Texas, accordingly.<sup>7/</sup>

Respectfully submitted

HEFTEL BROADCASTING CORPORATION

  
Roy R. Russo

  
Lawrence N. Cohn

COHN AND MARKS  
1333 New Hampshire Avenue, N.W.  
Suite 600  
Washington, D. C. 20036

Its Counsel

May 20, 1997

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<sup>5/</sup> Heftel takes this opportunity to correct a typographical error which appears on page 8 of its Comments. The sentence describing the difference in the average price of homes in Robinson and those in Waco should read as follows: "The average cost of a house in Waco is \$98,000 while in Robinson the average cost is \$80,000."

<sup>6/</sup> As Snyder points out (Comments, pp. 1-2), there is no need for the Commission to modify Snyder's current license for Station KYXS-FM.

<sup>7/</sup> As stated previously, Heftel supports Graham's proposal to modify the allotment for Station KWKQ in Graham, Texas to Channel 296C2, so long as that proposal is entirely consistent with the proposal advanced by Heftel in its Petition.

## \*\*\*\*\* FM CHANNEL SPACING STUDY \*\*\*\*\*

Job title: JACKSBORO CITY REFERENCE

Latitude: 33 13 23

Channel: 237A

Longitude: 98 9 14

Database file name: D:\FCCDATA\FM960613.EDX

Pre-1989 Class A spacings?: N  
Reqd.

CH	Call	Record	City	ST	Status	Bear.	Dist.	Dist.	Result
235C	KEWS	14777	Arlington	TX	LIC	122.2	131.2	95.0	36.2
237C3	KHYI	14814	Howe	TX	LIC	82.0	146.1	142.0	4.1
238C	KCKR	15374	Waco	TX	LIC	160.0	224.2	165.0	59.2
239C1	KKAJFM	15457	Ardmore	OK	LIC	42.5	132.5	75.0	57.5
240C1		15918	Mineral Wells	TX	VACANT	180.4	59.7	75.0	-15.3
240C3	KYXSFM	15919	Mineral Wells	TX	LIC	174.1	45.9	42.0	3.9
236A	KVMX	15930	Eastland	TX	ADD	217.8	104.8	72.0	32.8
237C3		15970	Lawton	OK	VACANT	350.4	143.7	142.0	1.7
237C3	KMGZ	15985	Lawton	OK	APP	349.0	153.0	142.0	11.0
237A	KMGZ	15996	Lawton	OK	CP	349.0	153.0	115.0	38.0
235C2	NEW	15998	Electra	TX	CP	321.2	123.1	55.0	68.1
238C1	KVRPFM	16338	Haskell	TX	LIC	267.9	155.1	133.0	22.1

\*\*\*\*\* End of channel 237 study \*\*\*\*\*

CERTIFICATE OF SERVICE

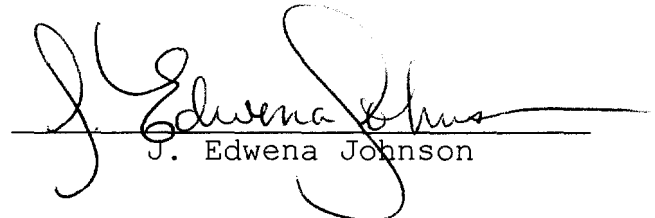
I, J. Edwena Johnson, a secretary in the law firm of Cohn and Marks, hereby certify that I have, this 20th day of May, 1997, sent by U.S. mail, postage prepaid, the foregoing **REPLY COMMENTS** to the following:

Robert Healy, Esq.  
Smithwick & Belendiuk, P.C.  
Suite 510  
1990 M Street, N.W.  
Washington, DC 20036  
Counsel for Jerry Snyder  
and Associates, Inc.

Mark N. Lipp, Esq.  
Ginsburg, Feldman & Bress  
1250 Connecticut Avenue, NW  
Washington, DC 20036  
Counsel for Hunt Broadcasting, Inc.

Harry C. Martin, Esq.  
Andrew S. Kersting, Esq.  
Fletcher Heald & Hildreth, P.L.C.  
1300 North 17th Street  
11th Floor  
Rosslyn, Virginia 22209  
Counsel for Metro Broadcasters-Texas, Inc.

Erwin G. Krasnow, Esq.  
Verner Liipfert Bernhard  
McPherson & Hand, Chartered  
901 15th Street, N.W.  
Suite 700  
Washington, DC 20005-2301  
Counsel for Graham Newspapers, Inc.

  
J. Edwena Johnson